

more ducts, usually placed in the ground, in which cables or wires may be installed.”²² Industry-wide usage makes clear that a “conduit” is “[a] pipe, usually metal but often plastic, that runs either from floor to floor or along a floor or ceiling to protect cables.”²³ But petitioners would define the term to include such items as “clips, straps, or racks,” solely on the ground that they are “structure[s]” that “hold wiring.”²⁴ Their definitional approach necessarily embraces far too much to remain plausible. The CO itself is a “structure” that “holds wiring.” Because petitioners detach their construction from the common usage of the term, the logical consequence of their approach is to include the entire CO *as such* within the definition of “conduit.” Such an outcome is absurd and would not withstand judicial scrutiny if the Commission adopted petitioners’ proposed definitions.

Similarly unpersuasive is petitioners’ effort to characterize “clips, straps, and racks” as “ducts.” Such items are obviously not “enclosed raceway[s]” within the Commission’s regulatory definition.²⁵ The Commission has further explained that a “conduit consists of one or more ducts, which are the *enclosures* that carry the cables.”²⁶ In the *Competitive Networks Order*, the Commission concluded that “the obligations of utilities under Section 224 encompass in-building facilities, such as riser conduits, that are owned or controlled by a utility Our interpretation of Section 224 is also consistent with industry practice, in which the terms duct

²² Petition at 9.

²³ *Newton’s Telecom Dictionary* 217 (16 1/2 ed. 2000).

²⁴ Petition at 9-10.

²⁵ 47 C.F.R. § 1.1402(k).

²⁶ *In the Matter of Amendment of Rules and Policies Governing Pole Attachments, Report and Order*, 15 FCC Rcd. 6453, 6491-92 ¶ 77 (2000) (emphasis added).

and conduit are used to refer to a variety of *enclosed* tubes and pathways, regardless of whether they are located underground or aboveground.”²⁷

As to the scope of the term “right-of-way,” the Commission held in the *Local Competition Order*:

We do not believe that section 224(f)(1) mandates that a utility make space available on the roof of its corporate offices for the installation of a telecommunications carrier’s transmission tower, although access of this nature might be mandated pursuant to a request for interconnection or for access to unbundled elements under section 251(c)(6). The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to “piggyback” along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility.²⁸

However, in its recent *Competitive Networks Order*, the Commission, while reaffirming that general point, nonetheless determined that “a ‘right-of-way’ under Section 224 includes property owned by a utility that the utility uses in the manner of a right-of-way as part of its *transmission* or *distribution* network.”²⁹ Petitioners argue that “any wiring or transmission facilities *in ILEC central offices* extending from or to switches is distribution plant” for these purposes.³⁰ Petitioners’ interpretation of “distribution” is unreasonably broad. In other contexts, the Commission has used that term to denote facilities lying well outside the CO.³¹ It is unclear,

²⁷ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, First Report and Order*, 15 FCC Rcd. 22983, 23019 ¶ 8074 (2000) (emphasis added) (“*Competitive Networks Order*”).

²⁸ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499, 16084-85 ¶ 1185 (1996) (footnotes omitted).

²⁹ *Competitive Networks Order*, 15 FCC Rcd. at 23021 ¶ 83 (emphasis added).

³⁰ Petition at 12 (emphasis added).

³¹ See, e.g., *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order*, 14 FCC Rcd. 20912, 20914 n.4 (1999) (“Digital transmission technologies have been used for some time in the network ‘backbone’

however, what (if any) additional facilities the Commission may have intended to include when it extended the scope of Section 224 -- almost as an afterthought -- to the "transmission . . . network." Clearly, petitioners find no support for their overly-broad definition of right-of-way in case law or industry usage.³²

IV. COLLOCATORS HAVE THE RIGHT TO DIRECTLY INTERCONNECT WITH AND OBTAIN TRANSPORT FACILITIES FROM THE PROVIDER OF THEIR CHOICE

Any rights that a competitive fiber provider may have to access collocation space in an ILEC CO flow from Section 251(c)(6) and the rules that the Commission has promulgated in implementing this statutory provision. As such, a CFP has a right to bring its fiber into an ILEC CO if it is also a CLEC and has leased collocation space or if a collocator has entered into an agreement to lease facilities from the CFP. In the former case, as both a CLEC and a CFP the

facilities, and now are starting to appear in the local feeder and distribution plant."); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 3696, 3789-90 ¶ 206 (1999) (explaining that the feeder distribution interface is the point where the "trunk line . . . , leading back to the central office, and the 'distribution' plant, branching out to subscribers, meet"); *Public Notice, Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals*, 15 FCC Rcd. 23208, 23209 (2000) ("Digital loop carrier systems pose additional difficulties for unbundling for competitive LECs who want to access the loop in the incumbent LEC's central office, because the copper loop to the subscriber (which is needed for xDSL-based services) is only available in the distribution plant, between the remote terminal (or optical network unit) and the network interface device at the customer's premises."). Cf. *Newton's Telecom Dictionary* 279 (16 1/2 ed. 2000) (defining "distribution" as, *inter alia*, "[t]he portion of a switching system in which a number of inputs is given access to an equal number of outputs").

³² These substantive definitional problems point out an additional procedural defect with the Petition. Petitioners are plainly seeking a substantive *change* in the Commission's rules, not the type of "clarification" that may appropriately be sought through a petition for declaratory judgment. The proper vehicle for such proposals is a rulemaking proceeding, not a petition for declaratory judgment. See, e.g., *In the Matter of GVNW Inc./Management Petition for Declaratory Ruling, or Alternatively, a Waiver of Section 36.612(a) of the Commissions Rules USF Data Collection, Order*, 11 FCC Rcd. 13915, 13918 ¶ 10 (1996) (petition for declaratory ruling is inappropriate where petitioner seeks "[s]ubstantive modifications" to Commission rules; such modifications "require a rulemaking").

CFP has an independent right of access. In the latter case, the CFP stands in the shoes of the collocator and is acting as his agent or subcontractor. The ILEC may not unduly restrict collocators in their choice of transport providers by requiring CFPs to comply with unnecessary and uneconomically burdensome procedures or methods for accessing collocation space.³³

Consistent with our advocacy in the collocation proceeding, it is Qwest's position that the collocation provisions of the Act, when properly interpreted, provide considerable flexibility for CLECs and CFPs to access each other on reasonable terms in the central office. In the collocation proceeding, Qwest argued that it would not be just and reasonable to deny a collocator who otherwise meets the "necessary" standard (i.e. for interconnection or access to UNEs) additional incidental (and reasonable) uses of the collocation space, such as cross-connects to other CLECs that are otherwise lawfully collocated in the central office.³⁴ Qwest

³³ Qwest discussed this issue at length in its comments in the Collocation Remand proceeding which are attached hereto. For example in its comments, "Qwest urge[d] the commission to require incumbent LECs to:

- honor the ROW/conduit access provisions of the interconnection agreements and prohibit the incumbent LECs from requiring separate, duplicate contracts in order to obtain access to manholes; and
- ensure that CLECs can continue to have the option of having ROW/or conduit access issues addressed as part of a single, comprehensive interconnection agreement that must be filed and approved by the state commissions."

Id. at 20-21.

³⁴ See Qwest Comments in the Collocation Remand proceeding, CC Docket Nos. 98-147 and 96-98, filed Oct 12, 2000, at 16-17 ("Qwest Collocation Comments") "The Act, however, does not allow a CLEC to obtain collocation from an ILEC for the *sole or primary purpose* of cross-connecting to other CLECs. Indeed, cross-connecting to other CLECs does not equate to interconnection with the [incumbent] local exchange carrier's network, [47 U.S.C. § 251(c)(2)] or access to the unbundled network elements of the incumbent LEC; [47 U.S.C. § 251(c)(3)] nor can it be argued that cross-connects are necessary to access the UNEs of, or achieve interconnection with, the incumbent LEC as required by section 251(c)(6). [Footnote omitted.] Where a CLEC does not otherwise meet the standards set forth in that provision, there can be no justification (or authority) for requiring the incumbent LEC to permit such cross-connects."

submits that such an incidental use of the space includes CLEC to CLEC cross-connects which allow a collocated CLEC to reach a CFP's facilities through another CLEC's collocation space. By this method, a CFP may effectively interconnect with several CLECs lawfully collocated in a CO without collocating or running fiber to multiple collocation arrangements.

Thus, petitioners are incorrect to the extent that they contend that the Commission's rules prevent them from reaching their customers that are collocated in ILECs' COs. However, if a specific ILEC's procedures obstruct CFPs from serving collocated customers, it is a matter for a complaint proceeding not a declaratory ruling.

V. VERIZON'S CATT SERVICE IS A REASONABLE AND FEASIBLE MEANS OF ALLOWING CFPs TO EFFICIENTLY SERVE COLLOCATORS

Competitive fiber providers may be providing service to numerous collocators in a single ILEC CO. In such cases, it is in the interest of both the CFPs and ILECs to allow the CFPs to interconnect with collocating carriers in the most efficient manner. Verizon's Competitive Alternate Transport Terminal ("CATT") service appears to be an efficient means of allowing CFPs to serve multiple collocators in a single CO. This service allows CFPs to access a shared splice point, the CATT, in the CO for the purpose of terminating competitive fiber for distribution to individual collocators.³⁵ If services similar to CATT were made available to CFPs by other ILECs, the process of serving multiple collocators would be simplified for both the CFPs and the ILECs.³⁶

As was mentioned above, Qwest uses third-party fiber providers to deploy local networks in areas where it has not yet completed construction of its own network facilities. In Verizon's

³⁵ The CATT can be found at URL: http://www.BellAtlantic.com/wholesale/html/customer_doc.htm . Click on CLEC Handbooks, Volume 3, then go to Section 4.6.

territory, where CFPs have the ability to access CLEC collocation sites using Verizon's CATT service, Qwest has been able to meet CFPs in COs rather than in a manhole. Conversely, in those regions where a CATT-type service is not available, Qwest is usually required to interconnect with CFPs outside the CO. In such situations, Qwest normally must construct new facilities outside the CO to reach a "meet point" to connect with a collocator fiber provider. This greatly increases the expense and time required to gain access to competitive fiber transport.

In addition to using CFPs, Qwest would like the opportunity to act as a CFP since it has fiber rings in many out-of-region metropolitan areas. In those cases where Qwest has collocated in an ILEC CO and has pulled its own fiber (into its collocation space), it would like to provide other collocated CLECs with an alternative means of transport. Verizon's CATT service allows Qwest to serve these CLECs in a timely and efficient manner.

CATT-type arrangements also provide benefits to the ILEC including:

- Conservation of conditioned collocation space -- CATT service is advantageous for both ILECs and competitive fiber providers since it allows competitive fiber providers to use lower-cost unconditioned CO space; thereby allowing ILECs to conserve more costly conditioned space for collocators requiring the placement of specialized telecommunications equipment.
- An efficient and administratively simple method for ILECs to allow CFPs to interconnect with multiple collocated CLECs. Thereby, avoiding the necessity of bringing multiple fiber runs into an ILEC CO.

VI. TELECOMMUNICATIONS CARRIERS HAVE A RIGHT OF ACCESS TO MANHOLE ZERO UNDER SECTION 224(f)(1)

Petitioners ask the Commission to "specifically determine that 'manhole zero' is subject to the nondiscriminatory access obligation of Section 224(f)(1)."³⁷ This is a reasonable request

³⁶ While Qwest Corporation, Qwest's ILEC operation, does not yet have such a service offering, it is seriously considering doing so in the near future.

³⁷ Petition at 18.

and should be granted if the Commission chooses to formally address the specifics of the Petition. Regardless, Qwest is of the opinion that manhole zero is a part of a LEC's conduit systems. As such, other telecommunications carriers have a nondiscriminatory right-of-access to manhole zero under Section 224(f)(1).

It is difficult to satisfy the nondiscriminatory access requirement if LECs do not have reasonable processes and procedures in place to accommodate requests for access. As Qwest pointed out in its earlier comments in the Collocation Remand proceeding, out of region (*i.e.*, outside of Qwest Corporation's 14-state service area) Qwest has encountered numerous challenges/obstacles in gaining access to manhole zero from other ILECs.³⁸ At a minimum, the Commission should require ILECs to have a uniform process within their service areas, unless a state pole attachment act controls and has different requirements.³⁹ Not only would uniform processes reduce the burden on new entrants, they also appear to be a more efficient way for ILECs to operate.⁴⁰ Even in those cases where ILECs have defined processes, the processes often are not being followed.⁴¹ This cannot be allowed to continue -- nondiscriminatory

³⁸ Qwest Collocation Comments at 18-23.

³⁹ 47 U.S.C. § 224(c)(1).

⁴⁰ "For example, in the SWBT territory of SBC, the process of having manholes assigned is included in the collocation application process. However, in the Ameritech territory and the Pacific Bell territory, completely separate manhole applications must be submitted. In Ameritech, the applications can be submitted to a centralized Structure Access Center, however in Pacific Bell, the applications must be filed with a variety of regional contacts depending upon the city in which the manholes are required. In addition, in California, Pacific Bell will not accept applications from personnel at a CLEC whose names are not pre-designated on a list that the CLEC must maintain with Pacific Bell (a CO 4926 form). Finally, Qwest has encountered delays in having incumbent LECs assign manholes until the incumbent LEC is provided a detailed map of Qwest's local network - a map which is not necessary in order for the incumbent LECs to assign the manholes on their own network." (Qwest Collocation Comments at 20-21.) Needless to say, as this example demonstrates, a single process would increase the efficiency of both telecommunications carriers seeking access and ILECs.

⁴¹ *Id.* at 22.

processes are meaningless unless they are followed. Of equal importance to Qwest is the time required to access manholes. In some cases, intervals have been unreasonably long. LECs' processes should be based on reasonable intervals that are clearly spelled-out in applications and other relevant documents.

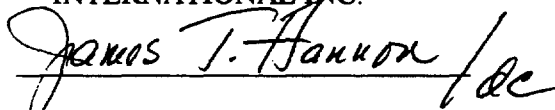
VII. CONCLUSION

For the foregoing reasons, the Commission should decline to expand the scope of Sections 224(f)(1) and 251(b)(4) as petitioners request. Such a broad expansion in the Commission's takings authority would neither be lawful nor in the public interest. Moreover, it appears that much of the relief that petitioners seek is not necessary because CFPs already have significant rights to interconnect with customers that are collocated in ILECs' COs.

Respectfully submitted,

QWEST COMMUNICATIONS
INTERNATIONAL INC.

By:

A handwritten signature in dark ink, appearing to read "Sharon J. Devine", is written over a horizontal line.

Sharon J. Devine
James T. Hannon
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2860

April 23, 2001

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

APR 23 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
And)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	

COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

Robert B. McKenna
Blair A. Rosenthal
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Attorneys for
QWEST COMMUNICATIONS
INTERNATIONAL INC.

Of Counsel,
Dan L. Poole

October 12, 2000

"COURTESY COPY"

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	2
A. Proper Interpretation of the "Necessary" Standard Need not Impede Advancement of the Act's Goals and Objectives.....	3
B. Rules or Policies which Serve as a Primary Purpose to Reduce the Value of the Collocation Product are not Mandated by the Act	4
C. The Commission Should not Devise Pricing Rules that Motivate Incumbent LECs to Seek to Avoid Collocation.....	6
D. Qwest's Current In-Region Collocation Policies Have Resulted in Significant Space Dedicated to Collocation	7
II. COMMENTS ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 98-147	8
A. Meaning of "Necessary" under Section 251(c)(6)	8
B. Removal of Obsolete Equipment	12
C. Functionality of Equipment CLECs Seek to Collocate	12
D. Line Cards.....	14
E. Limitations on Services Provided by a Collocator	15
F. Cross Connections between Collocators.....	16
G. Points of Entry into Incumbent LEC Central Offices	18
H. Selection of the Actual Physical Collocation Space	23
I. Collocation at Remote Incumbent LEC Premises	25
1. Disclosure of Information Concerning Remote Terminals	27
2. Line Card Collocation	28
3. Zoning and Rights-of-Way Issues.....	29
4. Virtual Collocation in Remote Locations	30
J. Provisioning Intervals	31

	K. Space Reservation Policies	32
III.	COMMENTS ON FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 96-98	33
	A. Loops and Interoffice Transport.....	33
	B. Subloops	34
	C. Spare Copper	38
	D. Cross Connection	40
IV.	THE COMMISSION MUST RECOGNIZE THAT PRIVATEPROPERTY RIGHTS REMAIN OF CRITICAL IMPORTANCE	41
	ATTACHMENT -- Petition of Qwest Corporation for Clarification or, in the Alternative, Reconsideration, CC Docket Nos. 98-147 and 96-98, filed electronically on October 10, 2000 (receipt included)	

SUMMARY

These Comments mark the first time that the new Qwest Communications International, Inc. ("Qwest"), following its merger with U S WEST, Inc., has weighed in on any significant issues involving local competition. With this merger Qwest became a unique entity in the telecommunications landscape. Qwest is now a large interexchange carrier, competitive local exchange carrier ("CLEC"), and data local exchange carrier ("DLEC"), while simultaneously being a Bell operating company and large incumbent local exchange carrier ("incumbent LEC"). As such, Qwest is both a major purchaser and provider of collocation. Accordingly, Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses with the totally lawful desire of an incumbent LEC to make use of its own private property for its own uses. The balancing of these competing interests within Qwest as a whole, is very much like the balancing that the Commission will undertake in adopting rules that best meet the goals and aims of the Telecommunications of 1996 (the "Act").

Qwest has attempted to reflect this balancing in these comments. The central points in the comments are summarized as follows.

In terms of redefining the "necessary" standard of section 251(c)(6), Qwest submits that a particular piece of equipment is "necessary" for interconnection or access to unbundled network elements ("UNEs") when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary

part of the equation applies to the collocation of the equipment, not to the equipment itself.

It is also Qwest's view that if the primary purpose for collocating a given piece of equipment is interconnection or access to UNEs, then the CLECs should be permitted to collocate the equipment even if the equipment is multi-functional, and performs other reasonable ancillary functions that do not constitute interconnection or UNE-access functions. Moreover, once a CLEC lawfully obtains a collocation arrangement—i.e., by placing equipment that is both necessary to and actually used for interconnection or access to UNEs—then the CLEC should be allowed to deploy all reasonable ancillary functions of that equipment. This standard should apply even if the ancillary functions involve services not strictly defined as telecommunications service (although, functions totally unrelated to telecommunications should be prohibited).

Similarly, although a CLEC should not be allowed to collocate for the sole purpose of obtaining a cross-connection with another CLEC, once a CLEC lawfully obtains a collocation arrangement, it should be allowed to cross-connect to other collocators.

With respect to points of entry to incumbent LEC central offices, Qwest submits that the incumbent should be required to designate the appropriate point of entry for CLECs. Similarly, Qwest believes that incumbents should have the discretion to select the actual physical location of a CLEC's collocation space. The incumbent must act reasonably in doing so, however, and may not intentionally

place CLECs in a difficult to use or isolated space when more suitable space is available.

Qwest also supports physical collocation of CLECs at remote incumbent LEC premises, and, as an incumbent, offers several products to accommodate such requests. Where space is not sufficient to allow a CLEC to occupy an entire shelf in a remote terminal, then space is also not sufficient for a virtual remote collocation. Lastly, Qwest does not support the collocation of a single line card (as opposed to an entire shelf) at this time because a number of technological issues make it unworkable; should these technological issue be resolved, however, the Commission should revisit the issue, consistent with the requirements of the Act and the evolving marketplace.

With regard to the deployment of new network architectures, Qwest believes that the loop is properly defined as the physical transmission path between Qwest central offices and the customer premises. Qwest believes that dense wavelength division multiplexing should be treated as an additional capability of the loop and not as capacity of the fiber loop itself. Additionally, it is Qwest's position that unbundled dedicated transport should not be considered part of the loop—it is simply the provision of bandwidth between two offices.

With regard to the retirement of copper facilities, in many cases, any overlay of fiber does not mean that existing copper is abandoned—it is often converted to distribution facilities, and not retired at the time of the fiber placement. Further,

Qwest does not support the concept of state or federal approval of the retirement of obsolete loop plant.

Finally, Qwest submits that it is technically feasible for carriers to access the subloop by collocating at the remote terminal, and the Commission should require incumbent LECs to allow carriers to access the subloop at the remote terminal.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
And)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

Qwest Communications International Inc.¹ ("Qwest") hereby submits its Comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147* ("*Second Further Notice*") and *Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98* ("*Fifth Further Notice*"), released August 10, 2000. In the comments that follow, Qwest sets forth responses to a number of the Commission's questions in these dockets, in addition to specifying the principles underlying Qwest's approach which should guide the Commission in revisiting its collocation rules.

¹ On June 30, 2000, U S WEST, Inc. merged with and into Qwest Communications International Inc. U S WEST, Inc. was the parent and sole shareholder of U S WEST Communications, Inc. U S WEST Communications, Inc. was renamed Qwest Corporation on July 6, 2000.

I. INTRODUCTION

On June 30, 2000, Qwest Communications International Inc. merged with U S WEST, Inc. With this merger Qwest, which already was a large interexchange carrier and competitive local exchange carrier ("CLEC"), acquired U S WEST Communications, Inc. (later renamed Qwest Corporation), a Bell operating company and incumbent local exchange carrier ("incumbent LEC") in its fourteen state region. The resulting merged entity stands unique on the United States regulatory landscape. Qwest is both a major incumbent LEC and a major CLEC, and now approaches this Commission as simultaneously a major seller and purchaser of collocation space. Hence, Qwest is in the unique position of having to balance the need and desire of a CLEC for collocation space for its own uses, and the totally lawful desire of an incumbent LEC to make use of its own private property for its own uses. In a very real sense, this Commission can make no decision in this docket which is a total victory for Qwest, because the unmitigated self interest of an incumbent LEC and a CLEC would, if not checked by the counterweight which Qwest's ownership structure now provides, lead to positions which by their very nature were contradictory. The balancing of the two interests within Qwest proper is very much like the balancing which the Commission itself must undertake in determining a proper regulatory structure which can best meet the goals and aims of the 1996 Telecommunications Act.

We attempt to reflect this balancing in these comments. The Commission will note that many of the results which Qwest has reached herein differ somewhat from what either of the pre-merger parts of Qwest had advocated in the past.

Where such shifts have occurred, it has been a result of our ability to perceive a somewhat larger picture and the necessity to examine sympathetically a larger number of options than required by the pre-merger operations of either company. We set forth in this introduction some basic principles which have guided our analysis and which can form a backdrop for further analysis by the Commission itself.

**A. Proper Interpretation of the "Necessary" Standard
Need not Impede Advancement of the Act's Goals
and Objectives.**

The Commission's original rules fared badly in court because the Commission attempted to define the word "necessary" in the Act as meaning only "useful," a word which carries a far less rigorous meaning than does "necessary." Obviously Qwest is not going to suggest that the Commission repeat its efforts to create a new definition of "necessary" in this docket. However, it is important to state early on that proper definition of the term "necessary" does not carry the dire consequences which obviously concerned some at the time the initial collocation rules were adopted. We view a piece of equipment as being "necessary" for interconnection or access to network elements when that equipment is actually used for one or both of those purposes and collocation is necessary for the equipment to be used in a competitively meaningful fashion. In other words, the necessary part of the equation applies to the collocation of the equipment, not to the equipment itself. If significant efficiencies can be obtained in using the equipment at a collocated site which would not be available elsewhere, and the equipment is actually used for interconnection or access to network elements, then it would seem to meet the

"necessary" test under Section 251(c)(6) of the Act. Qwest notes that the test it proposes was not intended to make it more difficult for CLECs to collocate their equipment in incumbent LEC premises. The following types of equipment would apparently meet this standard: transmission equipment, including multiplexers; ATM switches; DSLAMs; routers and concentrators; frame relay switches; and Ethernet switches.

B. Rules or Policies which Serve as a Primary Purpose to Reduce the Value of the Collocation Product are not Mandated by the Act.

Much of the focus of the two Notices in the Collocation Order is on how a CLEC can lawfully use equipment which is collocated on an incumbent LEC's property. Can the CLEC connect the equipment with the equipment of another CLEC?² Can the CLEC use functions in equipment which do not meet the "necessary" test of Section 251(c)(6) of the Act, even though the equipment provides many functions which are necessary for interconnection or access to unbundled elements?³ Qwest submits that too much focus on the actual use of equipment collocated on the premises of an incumbent LEC is not productive. Obviously some examination is necessary to determine whether a CLEC can enlist the government to require the incumbent LEC to permit collocation at all. Unless the equipment is actually used for interconnection or access to elements, then the Commission has no power to require that it be collocated, whether the "necessary" test is met or not. But once it has been determined that a particular piece of equipment does indeed

² *Second Further Notice* at ¶¶ 88-92.

meet the standard of Section 251(c)(6) for collocation, there seems to be little justification for limiting the other natural and beneficial uses to which the CLEC could put the equipment. We suggest the following test: If the equipment is used primarily for interconnection and/or access to elements, and meets the necessary standard under Section 251(c)(6), there is no reason to limit or prohibit other functionalities which the equipment can efficiently and profitably perform. This analysis would also apply to the connection of the equipment of two CLECs in a single premise. If the equipment is lawfully collocated and is performing the interconnection and access functions which enabled it to gain its collocation rights, there is no reason to prohibit cross connection between two pieces of CLEC equipment both lawfully on the premises.

We recognize that this test, taken to *reductio ad absurdum*, could produce anomalous results. It is not our intention to support a rule which would permit a combination multiplexer and microwave oven that could be placed in collocation space and used to cook breakfast. We suggest that the test be based on whether the "primary" function of the equipment is to interconnect to the incumbent LEC network or to access network elements. "Primary" is itself a word which may have multiple meanings, but we know too little about how new equipment will be structured or configured in the future to establish more precision at this time. The Commission should not try to anticipate every circumstance which may arise in the future; if technology or the market evolves in such a way that problems arise under

³ *Second Further Notice* at ¶ 74.

the existing collocation rules, the Commission should revisit the rules at that time upon a complete record. We submit that the Commission should simply set forth the guideline that equipment with the primary functionality and use of interconnecting with the incumbent LEC network or accessing network elements in a manner that meets the necessary test of Section 251(c)(6) may lawfully be collocated and may lawfully perform other reasonable ancillary functions that the equipment is designed to perform.⁴ In this regard, the Commission could reasonably establish a rebuttable presumption that equipment with functionalities that enable interconnection or access to UNEs are permissible, regardless of other functionalities. State regulatory authorities should be entrusted with making actual determinations under the above test in circumstances where an incumbent LEC seeks to exclude a particular piece of equipment by demonstrating that it does not meet the "necessary" test.

C. The Commission Should not Devise Pricing Rules That Motivate Incumbent LECs to Seek to Avoid Collocation.

As a final introductory observation, we submit that it is important that the Commission look at establishing a mandatory collocation structure which is truly compensatory for incumbent LECs. If the Commission truly wants incumbent LECs to treat collocation as a business opportunity, it cannot have rules in place which make collocation a money-losing proposition for incumbent LECs. Currently

⁴ As a general principle, the Commission should not attempt to direct the course of new technology development. Technological growth better takes place in conformance to market direction.

the rules as applied by states often prevent reasonable compensation for collocation property—a problem which can be dramatically exacerbated by requirements for reconditioning and power modifications. Despite the fact that much of the shortfall in collocation pricing should be recoverable from the Federal Government, recovery remains uncertain and may well be opposed by the Department of Justice in some instances. In the context of this docket, it is important that the Commission reaffirm its clear expectation that state arbitrators establishing collocation prices will make these prices as fully compensatory as possible, and that incumbent LECs will be able to obtain full recovery of costs expended for adding and reconditioning space as well as for making costly power modifications.

D. Qwest Plays A Significant Role As Both An In-Region Provider of Collocation, and as an Out-of-Region Purchaser of Collocation.

As an incumbent, Qwest has provided 2,086 collocation arrangements to 70 different CLECs in 540 different wire centers. Through their collocation arrangements at these wire centers, CLECs have access to 14,190,908 of Qwest's retail access lines. These wire centers account for over 83% of all of Qwest's retail access lines.

Out of region, Qwest has collocated in over 400 wire centers in the Verizon, SBC, and GTE territories to support its CLEC and DLEC initiatives.

II. COMMENTS ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN CC DOCKET NO. 98-147

A. Meaning of "Necessary" under Section 251(c)(6)

In the *Second Further Notice*, as a response to the D.C. Circuit's conclusion that the Commission's definition of "necessary" in the context of collocation "seem[ed] overly broad and disconnected from the statutory purpose enunciated in § 251(c)(6),"⁵ the Commission sought comment on the meaning of "necessary" under section 251(c)(6).⁶ Specifically, the Commission sought comment on whether the definition of "necessary" should require that an incumbent LEC permit physical collocation of equipment having capabilities beyond what is necessary for interconnection and access to UNEs, such as the collocation of multi-functional equipment.⁷ Finally, the Commission inquired whether it must adopt a definition of "necessary" for purposes of section 251(c)(6) that is similar to the definition of "necessary" that the Commission adopted pursuant to section 251(c)(3) for determining which network elements must be unbundled.⁸

Qwest generally agrees with the D.C. Circuit that CLECs only have a right to "collocate any equipment that is *required* or *indispensable* to achieve

⁵ *GTE Service Corp. v. FCC*, 205 F.3d 416, 422 (D.C. Cir. 2000) (affirming in part and remanding in part *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *First Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd. 4761 (1999) ("*Advanced Services First Report and Order*").

⁶ *Second Further Notice* at ¶ 73.

⁷ *Second Further Notice* at ¶ 74.

⁸ *Second Further Notice* at ¶ 75.

interconnection or access to unbundled network elements.”⁹ This should not, however, necessarily preclude CLECs from collocating equipment that performs other additional functions beyond interconnection or access to UNEs. As is discussed above, the “necessary” part of the equation refers to the collocation itself, not to the equipment. For equipment to be lawfully subject to mandatory collocation its primary purpose must be for interconnection or access to UNEs. If it passes this test, it is subject to collocation if collocation itself brings about significant economies which are necessary for competition. For instance, if the primary purpose and use of a given piece of equipment is for interconnection or access to UNEs, then the CLEC should be allowed to collocate the equipment even if the equipment performs other reasonable ancillary functions that do not constitute interconnection or UNE-access functions.

A rule that would preclude CLECs from deploying any or all of the additional functions of such multi-functional equipment could place CLECs at a material competitive disadvantage by forcing them to place prohibited equipment elsewhere and backhaul traffic for switching and other functions, and in some cases require the purchase of duplicate equipment.¹⁰ Although restrictions on functionality would not prevent CLECs from offering services of the same quality as an absolute matter,

⁹ See *GTE v. FCC*, 205 F.3d at 422 (emphasis added).

¹⁰ Of course, to be able to obtain collocation of this multi-functional equipment in the first instance, the collocation of the equipment must otherwise meet the “necessary” standard. Moreover, Qwest does not intend to suggest that disparities in cost alone between the incumbent and a CLEC would suffice to meet the “necessary” or “impairment” standard; rather, an efficient CLEC’s ability to compete must be materially impaired.

such restrictions could, as a practical matter disrupt services and competition because the failure to utilize all the power of new equipment would artificially impose inefficiencies on some CLECs. Because price is one of the most important factors to consumers in judging the overall quality of competing services, restrictions on functionality could require competitors to provide service of a significantly lower quality if the added functionality affected price. Accordingly, as long as the primary function of a given piece of equipment is for interconnection and access to UNEs, CLECs should be allowed to deploy all other reasonable functions of such equipment.

This test should apply regardless of whether the additional functions involve services not strictly defined as telecommunications services.. The distinction between telecommunications and non-telecommunications services in the marketplace is blurring, and carriers must be able to offer a variety of services, including voice, video, fax, and Internet service, in order to be competitive. Of course, functions totally unrelated to telecommunications should continue to be prohibited.

Qwest does not believe that the standard suggested above would need to evolve as manufacturers develop equipment having additional capabilities. As long as the primary function and use of the equipment is for interconnection or access to UNEs, then the CLEC should be allowed to collocate the equipment—regardless of any additional or ancillary functions that the equipment may perform.

In response to the Commission's query whether the deployment of equipment that provides no functionalities other than those directly related to, required for, or indispensable to interconnection or access to unbundled network elements would consume more or less space in the incumbent's premises than would equipment that has multiple functions,¹¹ it is Qwest's experience that there is no necessary correlation between functionality and size. Moreover, there is no reason to conclude that newer equipment with multiple functions will require more space than older, single-function equipment used solely for interconnection or access to UNEs—though it may require more power or HVAC. In fact, given that a newer piece of equipment might be both multi-functional *and* smaller than its predecessor, there is no reason to believe that the approach recommended here will result in more rapid space exhaustion. If actual experience later contradicts this conclusion, the Commission can deal with it upon a more complete record at that time.

Moreover, Qwest believes that limiting CLECs to the use of outdated equipment or otherwise restricting a CLEC's use of multi-functional equipment collocated on incumbent LEC premises would hurt the efficiencies of both incumbent LEC and CLEC and, therefore, competition. There does not appear to be a good reason to adopt rules that motivate or direct this result.

¹¹ *Second Further Notice* at ¶ 80.